

§ 203.201

systems that are not separately covered by manufacturers' warranties, and includes any on-site water supply or sewage disposal systems.

State includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

Structural defect is actual physical damage to the designated load-bearing portions of a home caused by failure of such load-bearing portions that affects their load-bearing functions to the extent that the home becomes unsafe, unsanitary, or otherwise unlivable. Load-bearing components for the purpose of defining structural defects are defined as follows: Footing and foundation systems; beams; girders; lintels; columns; load-bearing walls and partitions; roof framing systems; and floor systems, including basement slabs in homes constructed in designated areas (see § 203.207) containing expansive or collapsible soils. Damage to the following nonload-bearing portions of the home is not considered a structural defect: Roofing; drywall and plaster; exterior siding; brick, stone, or stucco veneer; floor covering material; wall tile and other wall coverings; nonload-bearing walls and partitions; concrete floors in attached garages; electrical; plumbing; heating, cooling and ventilation systems; appliances, fixtures and items of equipment; paint; doors and windows; trim, cabinets, hardware, and insulation. Repair of a structural defect is limited to:

(1) The repair of damage to designated load-bearing portions of the home which is necessary to restore their load-bearing ability;

(2) The repair of designated non-load-bearing portions, items or systems of the home, damaged by the structural defect, which make the home unsafe, unsanitary or otherwise unlivable (such as the repair of inoperable windows, doors and the restoration of functionality of damaged electrical, plumbing, heating, cooling, and ventilating systems); and

(3) The repair and cosmetic correction of only those surfaces, finishes and coverings, original with the home, damaged by the structural defect, or which require removal and replace-

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ment attendant to repair of the structural defect, or to repair other damage directly attributable to the structural defect. It is the intent of this section to ensure the repair of a covered home to a condition approximately the condition just prior to the defect, not to a like new condition. It does not require refinishing of all interior or exterior surfaces if only one or two surfaces are damaged. It does not cover personal property items, not a part of the structure, which are damaged by the defect or as a result of the defect. It excludes damage covered by a homeowner's casualty insurance policy.

Warranty company is an insurance company or other entity that provides insurance backing for an insured ten-year protection plan which, if the Plan issuer fails to meet its obligations to a covered homeowner, will assume the obligations and perform in accordance with the Plan's coverage contract with the homeowner.

§ 203.201 Scope.

Effective August 6, 1991, the provisions and requirements set forth in § 203.202 through § 203.209 apply to one-to four-family dwellings covered by HUD mortgage insurance (including family units in a condominium where the units are insured under subpart A of part 234 of this chapter).

§ 203.202 Plan acceptability and acceptance renewal criteria—general.

(a) For a Plan to be acceptable to HUD, it must assure that:

(1) If a builder, for any reason, fails to correct structural defects or construction deficiencies in a property covered by an insured 10-year protection Plan during the term of any warranty offered by the builder on the property, the Plan issuer will effect the corrections in accordance with the terms of the Plan; and

(2) If a Plan issuer, for any reason, fails to effect correction of these deficiencies or defects, or otherwise fails to honor the terms of its coverage, its insurance backer or, if the Plan issuer is an insurance company, the insurance company itself, will effect the corrections or otherwise honor the terms of the Plan.

(b) In evaluating applications for renewal of Plan acceptance, HUD will take into consideration such reliable evidence, as is made available to the Department, of a Plan issuer's failure to fulfill its obligations. Where HUD has credible evidence of a Plan issuer's failure to correct covered homeowner problems, or there are justifiable homeowner complaints about untimely problem resolution by a Plan issuer, HUD will consider this as cause for termination of a Plan's acceptance and as grounds for initiation of sanctions against a Plan issuer or insurance backer, in accordance with 2 CFR part 2424. If HUD proposes to terminate a Plan's acceptance, the issuer of the Plan will be advised of the reason therefore, and the procedural safeguards of 2 CFR part 2424 will apply.

(c) Unless renewed, Plan acceptance by HUD expires automatically on the second anniversary date of acceptance. The Plan issuer must apply for acceptance renewal at least two months, but no more than three months, in advance of expiration to avoid automatic acceptance termination. Prior acceptance of a Plan will be continued beyond the date of automatic acceptance termination only by a written notification to the Plan issuer and only if the delay is caused by a lack of timely HUD processing of a renewal application. HUD will not extend the expiration date of a prior Plan acceptance if the Plan issuer has negligently provided incomplete information with its renewal application.

(d) After a Plan has been accepted by HUD, there shall be no change in, or modification to, its provisions, or in its insurance backers or insurance contract(s), without prior written HUD acceptance of such change or modification, except that changes mandated by other applicable laws may not require HUD's prior approval. A violation of this condition may be cause for termination of a Plan's acceptance, and may be grounds for initiation of sanctions against the Plan issuer, in accordance with 2 CFR part 2424. Insofar as practicable, HUD will respond to a Plan issuer's request for acceptance of a change within 30 days of receipt of the request. Plan acceptance by HUD will be for a two-year period.

(e) Requests for initial HUD acceptance or renewal of acceptance of a Plan should be made to the Deputy Assistant Secretary for Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Requests must be accompanied by information and documentation evidencing Plan compliance with § 203.204. Acceptability of Plans will be determined by the Deputy Assistant Secretary for Single Family Housing who will notify applicants of his or her determination. If a Plan is rejected, the applicant will be advised of the reason for rejection. The applicant may appeal the rejection to the Assistant Secretary for Housing, at the above address, stating specifically why the Plan should be approved. The Assistant Secretary (whose decision is final) will, within a reasonable time, advise the applicant whether the rejection will be upheld or reversed. Each HUD field office will be advised of Plans determined to be acceptable, or Plans that have been rejected.

(f) Existing Plans will be allowed a grace period of 9 months commencing from November 6, 1990 to make the necessary adjustments to comply with the provisions and requirements of § 203.200 to § 203.209.

(g) Each Plan issuer must submit a written certification addressed to the Deputy Assistant Secretary for Single Family Housing, 451 Seventh Street, SW., Washington, DC 20410, no later than three weeks before the anniversary date of the Plan's acceptance by HUD, that the insurance company backing its Plan is still an insurance carrier approved by the State insurance commission (or the equivalent entity) in each jurisdiction in which the Plan is offered, or is still a Risk Retention Group meeting the criteria of § 203.208 of this part.

(Approved by the Office of Management and Budget under control number 2502-0343)

[55 FR 41021, Oct. 5, 1990, as amended at 72 FR 73495, Dec. 27, 2007]

§ 203.203 Issuance and nature of insured 10-year protection plans.

(a) Plans may be issued:

(1) By a builder, warranty company, insurance company, or Risk Retention